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SUMMARY RECORD OF THE 1133rd MEETING

Held at Headquarters, New York,
on Tuesday, 31 March 1992, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Peru

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Peru (CCPR/C/51/Add.4)

1. At the invitation of the Chairman, Ms. Vargas and Mr. Lázaro (Peru) took places at the Committee table.

2. Ms. VARGAS (Peru), introducing her country's report, said that the fact that she had been sent in place of the person originally appointed to head Peru's delegation, the Public Prosecutor for Terrorism, because of death threats against him by the Shining Path terrorist group, underscored the painful reality in Peru. The current dynamics of violence that threatened that particular official as well as hundreds of other judicial officials in the country was preventing the Government from giving full legal scope to the promotion and observance of civil and political rights.

3. The driving force behind the violence, an anomaly in Peru, was the Shining Path. Since its first appearance in 1980 when it had disrupted an election, the terrorist group had resorted to the most inhuman means to violate all articles of the Covenant. The democratic Government in Peru was in the front lines fighting to protect the human rights of its people and to preserve the nation's democratic institutions, as mandated by article 80 of the Constitution. Human rights legislation was constantly being developed, but its application was being blocked by terrorist violence.

4. Three basic premises were involved. The Government did not consider that the actions of the terrorists in any way excused or justified any excesses committed by its security forces in defence of the country. The offences perpetrated by the Shining Path and by the Tupac Amaru Revolutionary Movement qualified them as terrorist groups pure and simple, and not as insurgents in defence of the constitutional order, who would be sanctioned by article 82 of the Constitution. Lastly, certain basic rights were inalienable and could under no circumstances be suspended.

5. It must be understood that Peru's institutions and laws had had to be adapted to deal with the situation of violence, and not simply within the confines of the Covenant. In that difficult transitional period, the Government, while aware of its responsibility to uphold the observance of civil and political rights, knew that it must act expeditiously and to deal with the detestable phenomenon of terrorism. Its experience during that period had also prompted new and coordinated legal and social approaches to the protection of human rights. A comprehensive human rights strategy had gradually been developed, leading to the issuance of recent legislative decrees and other provisions that sought not only to fill in gaps and take care of past problems but to avoid the repetition of undesirable situations in

(Ms. Vargas, Peru)

the future. The various branches of the Government were regularly involved in self-evaluation, as evidenced by the reports of the Senate Committee on Violence and Pacification.

6. A number of legislative measures showed the Government's commitment to the observance of civil and political rights. Legislative Decree No. 635 promulgated a new Penal Code that inter alia established penalties for human rights offences, such as the 15-year sentence under article 323 for officials involved in forced or involuntary disappearances, and qualified torture and summary executions as serious crimes and abuses of power in article 376. The new Penal Code also strengthened the jurisdiction of civil courts over human rights violations in order to eliminate situations of impunity.

7. Any excesses committed in the struggle against terrorism were meticulously scrutinized both by the Council for Military Justice and by the Ministry of Justice. Between August 1990 and July 1991, 37 members of the army had been convicted of human rights violations and 2 members of the navy were being tried; and the Council for Military Justice had tried 70 cases between 1989 and 1991.

8. Legislative Decree No. 652 had established a Council for Peace to coordinate and organize civilian support for the national pacification effort. Javier Pérez de Cuéllar was now its honourary President and it would be submitting a national plan for pacification within the next two weeks to the Executive branch.

9. Legislative Decree No. 665, basically an enactment of a 1991 proposal by the Senate Committee on Violence and Pacification, clarified the legal authority of government inspectors during states of emergency and gave them the power to enter police headquarters, military facilities and any centre of detention to investigate the situation of prisoners or persons reported as having disappeared. The Ministry of Defence had officially granted the same powers to members of the International Red Cross, and the Joint Armed Forces Command had provided that the International Red Cross should immediately be informed when anyone was detained.

10. In December 1991 the Senate, on the recommendation of the Senate Committee on Violence and Pacification, had passed a law, amending Act No. 24150 governing regulations during states of emergency in which the armed forces assumed control of domestic order and established political-military commmands. The new legislation established the full power of the political authorities in zones where a state of emergency had been declared and reaffirmed the Regional Government's authority as part of the anti-terrorist strategy, establishing lines of communication and coordination with the military command headquarters in emergency zones, so that they could work together to achieve common goals of development and pacification. Efforts were currently under way to amend Act No. 24150 according to the Senate legislation; the latter would apply also to Legislative Decree No. 749

(Ms. Vargas, Peru)

regulating relations between the political-military commands in emergency zones and the various government authorities.

11. In January 1992 a Letter of Understanding establishing a national register of detained persons had been signed in Lima by the Ministries of Defence and the Interior, the Attorney-General's Office, the Government of the United States and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

12. The armed forces themselves had put into effect a series of activities to assist the poorest sectors of the population, cooperate in restoring institutions and establish supportive relations with the sectors most directly hit by terrorist aggression.

13. Pursuant to Act No. 25211 of May 1990, the Joint Armed Forces Command had provided for the implementation of a national plan for the publicizing and teaching of the Constitution of Peru and of the human rights instruments. The plan provided for the formulation and implementation of training programmes on human rights in schools for officers and enlisted men, and the distribution of documents on human rights in all national military facilities.

14. The pacification legislation also included Decree Law No. 676, providing for the rehabilitation and maintenance of the road infrastructure of the country; Decree Law No. 735 amending the civil defence system; Decree Law No. 741 on the granting of official status to self-defence committees; Decree Law No. 748 on reduced or suspended sentences for persons convicted of terrorism and drug trafficking who repented; and Decree Law No. 753 establishing a comprehensive alternative development strategy for eradicating illicit drug trafficking. All those laws sought to fill the need, which had become apparent in the 1980s, for not merely a punitive approach but also political, socio-economic and educational and cultural action to deal with the problems.

Constitutional and legal framework within which the Covenant is implemented, in particular during the state of emergency (art. 2 (2) and (3) and art. 4 of the Covenant) (sect. I of the list of issues)

15. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Peru, namely: (a) specific measures foreseen to bring Peruvian legislation, in particular penal legislation, more in line with the terms of the Covenant; (b) the possibility of bringing an action of habeas corpus or amparo for a real or potential violation of the Covenant, under article 105 of the Constitution giving human rights instruments the status of constitutional law; (c) information on any judicial bodies other than the Court of Constitutional Guarantees qualified to deal with the remedies of habeas corpus and amparo; (d) additional information on the functions, activities and hierarchy of the Peruvian legal system; (e) clarification on the rights derogated from during the successive states of

(The Chairman)

emergency as well as the constitutional or statutory basis for ensuring conformity with article 4 (2) of the Covenant in times of emergency; (f) a description of the impact of the successive states of emergency on the exercise of the human rights guaranteed under the Covenant, particularly with regard to the functioning of the judicial system; (g) an indication of the safeguards and effective remedies available to individuals during a state of emergency; (h) a clarification of the respective powers of the Government, the Congress, the Standing Committee and the Judiciary as well as of the armed forces and police during a state of emergency, and a clarification of the constitutional status of the proposed national committee for the protection of human rights and its relationship to the bodies referred to in paragraphs 26 to 28 of the report; (i) further information on the impact of the subversive and drug-trafficking activities referred to in paragraphs 34 and 38 of the report and on the Government's efforts to respect the various provisions of the Covenant; (j) information on efforts made to promote public awareness, in indigenous communities as well, of the provisions of the Covenant and the Optional Protocol; (k) information on follow-up action taken as a result of the views adopted by the Committee with regard to Peru in communications Nos. 202/1986 and 203/1986.

16. Ms. VARGAS (Peru) said, with regard to section I (a) of the list of issues, that not only did the Constitution ratify all provisions of the Covenant and Optional Protocol, but it contained throughout specific provisions reflecting the Covenant. The Government had also been amending national legislation to conform to the Covenant. For instance, the Civil Code had been reformed by means of Act No. 25291, article 1, of which established that the human person enjoyed rights from birth, and article 10, of which stipulated that the Supreme Court, the Court of Constitutional Guarantees and the Attorney-General must report to Congress on any shortcomings or defects in domestic legislation. The Penal Code as well had been reformed in Legislative Decree No. 635, article 2, of which established that the Code applied to offences committed abroad by Peruvians in established cases, the penalties for which would be in accordance with international treaties. The Code of Civil Procedure had been reformed in Legislative Decree No. 768 establishing specific guarantees of the administration of justice and its independence. The Code of Penal Procedure had been promulgated in Legislative Decree No. 654, which provided for the granting of prison benefits to prisoners that would facilitate their reintegration into society and their enjoyment of civil rights.

17. With regard to section I (b) of the list of issues, she drew attention to article 101 of the Constitution which stipulated that international treaties formed part of Peruvian law and prevailed over any conflicting national provisions. Therefore, actions of habeas corpus and amparo could be brought under the Covenant, which had thus been incorporated into domestic law. A person who considered that his rights had been violated could also resort to the Human Rights Committee or the Inter-American Commission on Human Rights, the Organization of American States, or any other such international body.

(Ms. Vargas, Peru)

Petitions from such international bodies were received and acted upon by the Supreme Court in accordance with domestic legislation on the matter, and the Court also supplied any documentation requested by such bodies. With regard to section I (c), the Court of Constitutional Guarantees was the highest body qualified to deal with habeas corpus and amparo.

18. In reply to section I (d) of the list of issues, she explained that the Judicial Branch comprised the Supreme Court, with civil, criminal, agrarian and labour divisions; and the Superior Court, which had similar divisions and included professional and non-professional justices of the peace and court secretaries who provided legal assistance. Detailed information on the Peruvian legal system would be submitted later in writing.

19. With regard to section I (e) of the list of issues, once the President, with the approval of the Council of Ministers, had decreed a state of emergency, the following constitutional rights could be suspended: the rights to personal freedom and security and to inviolability of the home, the freedoms of assembly and of movement within the national territory. With regard to section I (f), the armed forces assumed control of internal order during states of emergency. It could happen that excesses occurred during such periods, owing primarily to an improper interpretation of article 231 of the Constitution. However, the Judicial Branch of the Government and the Office of the Attorney-General continued to exercise their respective jurisdictions as established by law. With regard to section I (g), during states of emergency the remedies of habeas corpus and amparo were available. There was also a remedy of preventive habeas corpus available to persons who believed that one of their rights was about to be restricted. Moreover, all the personal guarantees established in article 2 (20) of the Constitution remained in effect, with the exception of those referred to in article 231. Therefore, all citizens had the right to bring any of the actions provided by law if they felt that their personal rights had been violated.

20. In response to section I (h), she said that it was a concern of the Government to avoid any breach of established rights during a state of emergency. The Court of Constitutional Guarantees had jurisdiction over the entire country and was competent to declare, in cases brought before it, the partial or total unconstitutionality of laws, legislative decrees, general regulations or municipal ordinances that contravened the Constitution in form or in content. It conducted judicial reviews of last resort of cases in which a motion of habeas corpus or amparo had been denied, and could be summoned to act by the President, the Supreme Court, the Attorney-General, 60 deputies, 20 senators or 50,000 citizens upon submission of duly certified signatures. The Congressional Justice and Human Rights Committees (para. 28 of the report) conducted preliminary studies and drafted views on pending bills and the extent to which such legislation conformed to the relevant human rights instruments, especially the Covenant.

(Ms. Vargas, Peru)

21. With regard to section I (i), it was the Government's policy to take measures to punish groups engaged in terrorism or drug trafficking. There was, for instance, the Memorandum of Understanding signed in 1991 between Peru and the United States to combat illicit drug trafficking, paragraph 8 of which contained specific provisions ensuring that human rights would be observed in carrying out the anti-drug strategy. Peru had also participated in the second anti-drug summit conference in San Antonio, Texas, and had concluded a drug-enforcement agreement with the United States that provided for unrestricted observance of human rights, especially within the framework of the Covenant. Peru had subsequently adopted Legislative Decree No. 747 amending the Penal Code by establishing penalties for drug trafficking.

22. With regard to section I (j), it should be noted that article 22 of the Constitution made the teaching of provisions of the Constitution and the international human rights instruments obligatory in educational institutions, both military and civilian, at all levels. That meant that human rights publicity campaigns and training programmes had to be organized. The Ministry of Justice, in cooperation with public and private organizations, was developing programmes to publicize Peru's human rights legislation. For instance, it had recently organized five informational symposia on the new Penal Code and three seminar-round tables on the Constitution, the Civil Code and the Code for Minors, for the benefit of all teachers in Lima.

23. With regard to section I (k) of the list of issues, the Ministry of Justice, through the National Council on Human Rights, had met with the Ministries of Foreign Affairs, the Interior, Defence and Education and the Attorney-General's Office to assess the Government's efforts in the defense of human rights and consider ways of following up on United Nations documents or on the provisions of the Covenant.

24. Mr. PRADO VALLEJO said that, while the Committee had been given a comprehensive report on Peru's internal legislation, more information was required on the practical measures that had been implemented to ensure effective enjoyment of human rights.

25. Despite considerable efforts made by President Fujimori to resolve Peru's economic and political problems and to move towards democracy, serious internal problems continued to plague the country. The human rights situation had worsened over the last 10 years. That deterioration was due to a combination of factors: on the one hand, subversive activities against the Government by the Tupac Amaru and Shining Path groups and, on the other, repressive actions by the armed forces, the police and paramilitary groups, which appeared to operate with impunity throughout the country. While it was true that violence resulting from social problems and political subversion must be dealt with, that was no justification for violence perpetrated by the forces of public order.

(Mr. Prado Vallejo)

26. The recent legal provisions implemented in the country were undoubtedly well-intentioned, but their consequences had been very grave. By granting special powers to the military forces, they had unleashed a wave of violence and human rights abuses throughout the country. Under article 2 of the Convention, it was the duty of States to take the necessary steps to give effect to the enjoyment of human rights. There were clearly no effective guarantees of human rights in Peru, and information was needed on the specific measures being taken to prevent further such abuses.

27. In the zones where a state of emergency had been declared, recourse to habeas corpus and to amparo was not permitted, although such recourse was guaranteed by the Constitution. There was no case on record in which either of those measures had been invoked or in which any military person had been arraigned for violations of human rights. While two officials had been brought before a military court, the case had subsequently been suspended, demonstrating the impunity with which the authorities were able to trample on human rights in those zones. There were no courts in those zones and no legal remedies available to the population against the only penalties applied: detention and death.

28. He deplored the total disregard for human rights in those zones, noting that, following successive declarations of states of emergency, 50 per cent of the national territory was currently under emergency measures. In accordance with the provisions of article 4 of the Convention, certain human rights had been suspended, but there was no evidence that the others were still in effect. Further information was required, therefore, on the rights from which no derogation could be made, under the provisions of article 4.

29. Under Act. No. 24150 of 1985, the general legislation of Peru was virtually set aside in the emergency zones, giving extraordinary powers to the military commanders; they were free to detain anyone they pleased and could pass judgement without having to report back to the civilian authorities. Lists of complaints about human rights abuses had been published by such organizations as Amnesty International and Americas Watch, but no action had been taken. There were countless reports of disappearances, extrajudicial executions and cases of torture. There was no system for granting access to detained persons: judges were not only powerless to grant access, they were even unable to find out where detainees were held.

30. Death squads and other paramilitary groups operated with complete freedom throughout the emergency areas. According to the findings of the United Nations Special Rapporteur in 1991, farmers and peasants who refused to join the civilian defence patrols set up under the auspices of the armed forces were subject to attacks and executions, as in the Ayacucho massacre of peasants in 1990. According to the coordinator for human rights in Peru, in 1991 3,800 people had died as victims of violence in Peru, there had been 306 political assassinations and extra-judicial executions, 90 persons had been killed by the army and 30 by paramilitary groups. The General Assembly

(Mr. Prado Vallejo)

of the Organization of American States had described the situation in Peru as an affront to the conscience of the hemisphere and a crime against mankind.

31. Speaking both as a member of the Committee, and as a representative of the neighbouring State of Ecuador, he expressed the hope that Peru would soon be able to find an effective political solution to its problems and to give full effect to the enjoyment of human rights in the country.

32. Mr. MAVROMMATIS said that the introduction by the representative of Peru demonstrated how the democratic foundations painstakingly being laid in that country were systematically undermined by insurgent groups. It was understandable in a country facing such mortal danger, in which a state of emergency had been declared, that there would be certain violations of human rights. It was essential, however, to protect the rights of both the innocent and the guilty, including those who took up arms against the Government, and it was the duty of the Committee, through constructive dialogue, to promote positive efforts by Peru to ensure the observance of human rights.

33. The report referred only to constitutional and legal provisions and not to the practice of human rights in the country. He regretted that the information relating to the state of emergency had been very scanty as that was an issue of central concern to the Committee.

34. With reference to article 2 of the Covenant, he noted that Peru had acceded to the Covenant two years before the adoption of its Constitution, and the Constitution could therefore have incorporated all the provisions of the Covenant. According to paragraph 16 of the report, however, article 2 (2) of the Constitution guaranteed equality without discrimination on the grounds of sex, race, religion, opinion or language, and did not include all the categories listed in article 2 of the Covenant. With reference to the remedy of amparo, he asked for information on the derogation from, and restrictions on the application of, articles of the Covenant. He also wondered if the representative of Peru could indicate the composition and membership of the National Council for Human Rights described in paragraph 27.

35. With reference to article 4, the Committee required, as soon as possible, information on the articles that had been derogated from under the state of emergency. Such information should have been included in the initial report, with an indication of the grounds for such derogation. The Committee had considered information from a variety of sources on violations of non-derogable articles, such as those concerning torture and the right to life. Information was urgently required on the steps taken by Peru to investigate such violations, on the commissions of inquiry set up and the measures taken to ensure their independence, on other actions taken in response to such information and on expectations of the lifting of the state of emergency. He wondered how the declaration of highly localized or short-term states of emergency could be reconciled with the Covenant, which merely stipulated that emergency measures could be taken if the life of the nation was threatened.

(Mr. Mavrommatis)

36. More information was also required on the courts which had jurisdiction to deal with instances of derogation from the rights under article 4 and on the safeguards of those rights. The phrase "ordinary legal procedures" in paragraph 35 also required further clarification.

37. Finally, the answer, concerning communications Nos. 209/1986 and 203/1986, had been incomplete and he requested further details.

38. Mr. AGUILAR said that the report was laconic in the extreme and said virtually nothing about the practical situation in the country. And yet, serious acts of violence - massacres, torture, "disappearances" and summary executions - by terrorist groups such as Shining Path and the Tupac Amaru movement were commonplace. Equally disturbing were the reactions of the military, which often seemed to adopt similar tactics and had never been held accountable for any such actions.

39. The Committee had already asked for more information on disappearances in connection with Peru's initial report, yet none had been forthcoming. The Committee must know which rights, specifically, had been derogated from. As for rights that remained in effect, it would be useful to know how the standards laid down by article 14 had been guaranteed. Further, the Committee needed to know how, why and on what basis the states of emergency had been renewed and expanded to cover large parts of the country and most of its people. Article 4 permitted states of emergency to be declared "in time of public emergency which threatens the life of the nation"; it was difficult to see how that applied, for instance, to the state of emergency once declared by three Lima penitentiaries. Those already imprisoned hardly seemed a danger to the nation.

40. Act No. 24150 had not been repealed, nor had Decree-Law No. 749, which placed regional and municipal political authorities - popularly elected officials - under military command. The civilian and judicial authorities still retained their prerogatives, but on sufferance, and the military had in fact repeatedly refused them access to accused persons. On that point, too, more information was needed.

41. In its introduction Peru had labelled the various armed groups terrorists and said that the right of insurgency set forth in article 82 of the Constitution was not applicable to them. The fairness of such an attitude escaped him, since one of the parties in conflict was unilaterally deciding the status of the other.

42. Reference had been made to committees on justice and human rights and to a National Council for Human Rights, but no details on their operation had been supplied; such details would be appreciated.

43. Ms. Vargas had spoken of "expeditious actions" taken against terrorism, but again the report was silent on that point. She had also mentioned

(Mr. Aguilar)

"excesses"; that hardly seemed the right word considering there had been more than 5,000 disappearances - far more than could be attributed to the excesses of a few members of the military. It had been alleged that in June 1991 a directive had been issued authorizing troops to "eliminate without trace" what were described as "subversives". The Committee needed more information on these matters.

44. Concerning the answer given to section I, he asked how the people of Peru were made aware of the provisions of the Covenant and whether they were, in fact, aware that they were entitled to come before the Committee.

45. He understood that the Court of Constitutional Guarantees was the highest body to which actions of habeas corpus or amparo could be brought, but the Committee would actually like to know what were the lowest courts in which such actions could be brought. If there were none, a peasant would have no choice but to go to Lima. Similarly, while the representative of Peru had mentioned informational symposia and round tables, these had seemingly been held only in the greater Lima area.

46. The answer to section I (i) had been too general with respect to drug trafficking, speaking only of the memorandum of understanding. It would be interesting to know what impact trafficking had had on the man in the street.

47. Mr. MULLERSON said that the Committee would be interested to learn what difficulties had been encountered in implementing the Covenant rights. According to paragraph 38 of the report the armed forces and police had scrupulously observed the law and the Constitution; however, certain NGOs and others maintained otherwise.

48. Clearly the Government was obliged to fight the terrorists and drug traffickers who were active in Peru; however, that was no excuse for failing to implement human rights.

49. According to a Senate committee report more persons had been killed by security forces than by Shining Path during counter-insurgency operations between 1980 and 1991. The United Nations Working Group on Enforced or Involuntary Disappearances had also revealed human rights abuses by the Peruvian armed forces. The Special Rapporteur of the Commission on Human Rights on questions relating to torture had noted civilian authorities' lack of control over military groups in the emergency zones, which had led to human rights violations in those zones. The Committee would like to know how many members of the security forces had been prosecuted for such violations.

50. NGOs had reported many instances of human rights violations. One case in point was the alleged massacre by the armed forces of villagers in Callara, Ayacucho Province, in May 1988. It would seem that the armed forces applied the principle of collective responsibility. Committee members would like the delegation to answer such allegations. The reference in paragraph 4 of the

(Mr. Müllerson)

report, to the right of the "masses", rather than to individual human beings, was interesting. He was reminded of the doctrine of collective rights, which had been used to justify the violation of individuals' rights and found the parallel a worrisome one.

51. Mr. SADI said that the legal base was satisfactory in the theoretical sense, as three bodies existed to promote human rights, to wit the Court of Constitutional Guarantees, the National Council on Human Rights, and the parliamentary committees on justice and human rights. However, there was a wide gap between theory and practice. Amnesty International had chronicled many cases of disappearance, rape and killing, both in the emergency zones and elsewhere. There was also extensive derogation from the various articles of the Covenant, as the military rulers applying states of emergency wielded excessive power and were subject to too little civilian control. The Committee would like to know whether Peru had the political will to control the military in the emergency zones and to put the legal provisions on human rights into practice.

52. Mr. FODOR noted that nine years had elapsed since the Committee had studied Peru's initial report - ample time for much to change. Yet the State party's report gave no inkling of any changes, focusing instead on legal provisions already dealt with at length in the previous report. It referred only briefly to the ongoing crisis that had arisen for social and political reasons. The preamble was more to the point, for it recognized the very serious problem posed by terrorist activities, which had led to the declaration of states of emergency. Since most reports of human rights violations came from the emergency zones, he wondered whether the Government had envisaged any really effective measures to deal with the underlying causes that had led to the declaration of states of emergency.

53. Clarification was also required with respect to the difference between a state of emergency and a state of siege, and the rights that might be suspended during the latter.

54. With respect to section I (k), he agreed with Messrs. Aguilar and Mavrommatis that the State party should give more pertinent information on the communications in question.

55. Mrs. HIGGINS said that the second periodic report of Peru did not meet the Committee's guidelines for the submission of reports, in that it was excessively formal and dealt with constitutional matters, rather than the body of the law, court decisions, administrative practice, social realities and the real difficulties hindering the enjoyment of human rights in Peru.

56. Under article 4 of the Covenant a State party was required to notify the others promptly of any derogation, giving a description of the circumstances which made the derogation necessary and of the measures being derogated from. Until 1988 Peru had provided such notification in respect of articles 9, 12,

(Mrs. Higgins)

17 and 21, and, again in 1990, had notified the Committee of derogations from articles 19 and 21 alone. Since that time, while states of emergency had been declared in various areas of the country, no further notification had been received by the Committee. It was not clear whether the earlier derogations were still in effect, and clarification of that fact would be welcome. In any event the Government should note its obligation to provide proper notification to the Committee of all derogations.

57. Lastly, the Committee had not been provided with additional information concerning communications Nos. 209/1986 and 203/1986, as requested in section I, paragraph (k), of the list of issues.

58. Miss CHANET said that she shared the concerns expressed by other members regarding the lack of detail in the report, and endorsed the comments of Mr. Prado Vallejo concerning the level of violence in the country.

59. The Government of Peru had provided notification of some 80 different states of emergency since 1983, yet the Committee had not been able to obtain completely satisfactory replies to the various questions it had raised in connection therewith. More information would enable the Committee to guide the State party with regard to the relevant criteria under article 4, thus enabling the Government to determine whether a state of emergency was justified and to take appropriate steps to safeguard those rights which could not be derogated from.

60. The report indicated that several human rights organs existed in Peru: she wished to know what their respective spheres of competence were, and, in particular, what follow-up measures were available to the Justice and Human Rights Committees of the Congress of the Republic of Peru (CCPR/C/51/Add.4, para. 28).

61. It was surprising to note that article 250 of the Political Constitution provided that the Public Prosecutor's Office should guarantee the independence of the judicial organs. It would be useful to have further details of how the system functioned in practice as well as details of the provisions of the new Code of Civil Procedure relating to the judiciary. The Committee had already noted the difficulties encountered in applying the remedy of habeas corpus, and would welcome an explanation of the proposed introduction of the concept of preventive habeas corpus and of what plans there were to ensure its effectiveness.

62. Mr. HERNDL agreed with previous speakers that the report was too formal, and did not provide enough detail of the actual situation in the country and of all the difficulties encountered. For example, it would be useful to have statistics regarding the practices of courts and administrative tribunals, a point which should be taken into account in the preparation of the next report.

(Mr. Herndl)

63. The report indicated that the National Council for Human Rights was responsible for preparing reports for submission to international organizations, given which he asked whether that body had played a part in preparing the second periodic report now before the Committee. If so, that would represent a welcome development in that the Committee had frequently urged the participation of human rights organizations in the preparation of country reports.

64. The report noted (para. 3) that unconditional respect for human rights was not only the responsibility of the State and the Government but of all citizens, a view which was particularly laudable in view of the crisis prevailing in the country. The report also noted (para. 5) that the Peruvian Government faithfully complied with the decisions adopted by competent organizations, in which connection he asked to what extent the views of the Human Rights Committee had been complied with.

65. It was gratifying to note that article 105 of the Political Constitution provided that the principles contained in treaties relating to human rights had constitutional priority. He asked whether that should be interpreted to mean that the actual text of international agreements was reflected in the relevant legal instruments or simply that they were reflected in Peruvian legislation. Further, article 101 of the Political Constitution stated that international treaties would prevail over national law in case of conflict between them. Such provisions were commendably progressive. In that connection, he asked whether individuals could thus directly invoke the provisions of the International Covenant on Civil and Political Rights.

66. Mr. DIMITRIJEVIC said that the reference in the report to the reasons for imposing states of emergency was extremely brief, and that the Committee had received information from other sources rather than from the Government. The Committee needed, rather than references to various legislative rules, a statement of the Government's attitude towards the threat to the country and of how the authorities intended to counter it. It appeared that many human rights organizations found it almost impossible to function in Peru owing to intimidation from both terrorist and government sources. Article 2 of the Covenant imposed an obligation on the Government to protect the operations of such organizations. He asked what government inquiries had been made into acts of intimidation with a view to assisting the organizations in question.

67. Mr. SERRANO CALDERA said that the report did not provide a clear picture of either the legal framework governing human rights in Peru or of the actual situation in the country. The status of human rights must be viewed against a complex backcloth of social, economic and political difficulties besetting the country, in which violence came from both organized groups and from government forces, and where many segments of the population were marginalized. Part of the appeal of the organized groups in Peru was to ethnic loyalties which predated and transcended the national identity, in addition to which there was the complex issue of drug trafficking, the whole being overlaid by neo-liberal economic policies that had translated, for many, into worse conditions.

(Mr. Serrano Caldera)

68. Those difficulties were aggravated by a crisis in the institutional machinery of the country, as evidenced by the fact that, declared or not, states of emergency had ceased to be the exception and had become the general rule. There was a more or less ongoing state of confrontation. In such circumstances, it was difficult to see how legal measures alone could rectify matters; what was needed was a national political consensus.

69. He inquired how such remedies as habeas corpus, amparo and ensuring the constitutionality of legislation operated in Peru. Further details should be given of the role of the Court of Constitutional Guarantees, and the lowest level at which such remedies were available. Further, he inquired how the state of emergency had impinged upon the rights provided for in the Covenant, in particular given that article 105 of the Political Constitution provided that the principles contained in human rights treaties had constitutional priority. He asked about the precise role of the National Council for Human Rights, and how the judicial system had reacted to extralegal disappearances and murders. In that connection, it would be relevant to know what powers were granted to the military under the state of emergency. He asked about the precise scope of Act No. 24150, over what period it would in in force, and to what extent it represented a subordination of civilian to military authority, an issue of relevance to article 14 of the Covenant, as well as to article 233 of the Political Constitution, which guaranteed the administration of justice.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1134th MEETING

Held at Headquarters, New York,
on Wednesday, 1 April 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. EL-SHAFEI (Vice-Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Peru (continued)

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Peru (CCPR/C/51/Add.4) (continued)

1. At the invitation of the Chairman, Mr. Lazaro and Ms. Vargas (Peru) took places at the Committee table.

2. The CHAIRMAN said that the Peruvian delegation would proceed to answer the questions raised at the previous meeting from section I of the list of issues.

3. Mr. LAZARO (Peru) expressed appreciation to the members of the Committee for their comments on the report. His Government attached great value to its dialogue with the Committee. In raising their concerns, the members of the Committee had referred to a number of issues of a social and economic nature. Furthermore, they had acknowledged that one of the main obstacles to the full implementation of the rule of law in his country was the persistence of terrorist activity. From his Government's point of view, the entire situation of civil and political rights must be seen in that context.

4. Peru had a long tradition of democracy, not only in letter but in spirit. Peruvians had demonstrated their fierce attachment to democratic ideals by going to the polls in the face of threats, assassinations and other obstacles. There was a widespread awareness that civil and political rights could be preserved and protected only in a democratic State. That was the background against which any statements concerning the existence of violence and chaos in his country should be seen.

5. During the 1980s, Peru had embarked upon the modernization of its economy, a process which went hand in hand with the vitality of its democratic institutions. However, since then, his Government had faced a growing emergency because of the actions of terrorist groups, such as the Shining Path (Sendero Luminoso), whose goals and objectives, and wholesale rejection of civil and political rights, left no room for doubt. Lest anyone think that his characterization of that organization was biased, he drew attention to a report presented by the United States Assistant Secretary of State for Latin American Affairs to a subcommittee of the House of Representatives in March 1992. The report described the terror tactics used by the Shining Path to disrupt electoral processes and to intimidate candidates for local office, noting that terrorism of that type often succeeded.

6. Accordingly, so-called "terrorism from above" should be placed in its proper context. His Government did not have a policy of systematic violations of human rights. While mistakes could be and had been made, respect for human life was the cornerstone of Peru's democratic system. However, the Government

(Mr. Lazaro, Peru)

was facing a new phenomenon - an adversary who chose unconventional methods. While democratic institutions must be defended it was necessary to introduce corrective measures and to punish those found guilty of infringements of human rights.

7. Moreover, the situation in Peru could not be viewed in isolation from the international context. Peru was developing its economy with assistance from the international community. His Government was aware that the situation of the rural population required wide-ranging efforts. While the strategy of alternative development in coca-growing areas had received much attention, it would be viable only with organized political participation by the coca growers.

8. Ms. VARGAS (Peru), replying to the query in paragraph (e) of section I of the list of issues, said that the rights in question involved personal freedom and security, the inviolability of the home and freedom of association and movement. However, those rights had not been derogated from, but merely suspended for a period of 60 days, which could be extended by the President of the Republic with the consent of the Council of Ministers.

9. With regard to excesses committed during the states of emergency by members of the armed forces and national police, instances of that nature had been closely scrutinized by the Supreme Council of Military Justice and the civilian justice system. From August 1989 to July 1991, 37 members of the Peruvian army had been punished by their service or by the Supreme Council of Military Justice for human rights violations, and two cases involving members of the navy were currently under investigation. The adoption of the new Code of Penal Procedure would strengthen her Government's determination to bring those guilty of human rights violations to justice.

10. With regard to paragraph (d), laws were enacted by Congress and promulgated by the President of the Republic, while a legislative decree required a special act of Congress, giving the President the authority to legislate on specific issues for a determinate period.

11. In reply to the question concerning the difficulties encountered in implementing rights under the Covenant, she said that they varied considerably. There were logistical problems, such as the lack of infrastructure; difficulties stemming from the low salaries paid to officials of the judicial branch; and procedural difficulties, as shown by the fact that her Government had been applying a Code of Civil Procedure dating from 1936 and a Code of Penal Procedure dating from 1928. In 1991, new codes had been promulgated; while they might not be complete in all areas, they reflected a commitment to defending human rights.

12. In reply to the question concerning military-political commands, she said that it was sometimes necessary to establish that form of administration in order to restore order in areas where the civilian authorities had either been

(Ms. Vargas, Peru)

assassinated or threatened by members of terrorist groups. However, the Government, specifically the President of the Republic, had overall responsibility for the maintenance of law and order.

13. The Senate had recently approved a law amending the provisions of Act 24.150 concerning states of emergency, which empowered the armed forces to take control of internal order and establish military-political commands. The new law gave the political authorities full rights in the emergency zones and reaffirmed the authority of regional governments as part of an anti-terrorist strategy aimed at establishing communication and coordination between the authorities and military commands in the emergency zones and strengthening the State's authority in those zones. With regard to the question concerning states of siege, she pointed out that a state of siege applied to the whole of the country's territory and could be established in the event of invasion, foreign war or civil war, or if there was imminent danger that such situations might occur. Under article 231 of the Constitution, the President was required to specify, with the approval of Congress, which individual rights would remain in force.

14. In connection with the right of insurgency and the question of why armed groups in Peru were referred to as terrorists and not insurgents, she replied that the Shining Path and Tupac Amarú movements could not be described as insurgents because they were seeking to establish totalitarian and anti-democratic regimes and showed no respect for human rights.

15. Mr. LAZARO (Peru), replying to questions concerning preventive habeas corpus, referred to article 295 of the Constitution, which stipulated that a threat to individual liberty deriving from action or omission by any authority, official or individual was grounds for an action of habeas corpus. That provision had been incorporated into national law and was applied by the Peruvian Government.

16. On the question of the delegation of powers, he pointed out that the authority to legislate could be delegated to the executive under article 188 of the Constitution. That was not an extraordinary or exceptional measure and no special procedures were required. However, the authorizing law must specify the matters to be covered by the delegation of powers and the duration of the period in question. The President was required to report to Congress on legislative decrees issued in exercise of delegated powers. Such decrees had the force of law and, like ordinary laws, could be challenged as unconstitutional in an action brought before the Court of Constitutional Guarantees.

17. He confirmed that measures were being taken to strengthen the legal system and cited the example of the conclusions reached at the recent summit meeting on the drug problem held at San Antonio, Texas, concerning the strengthening of the administration of justice and legal cooperation for the purpose of combating drugs trafficking.

(Mr. Lazaro, Peru)

18. With regard to the difficulties encountered in implementing the rights provided for in the Covenant, the main problems were lack of logistical support and infrastructure, the low salaries paid to the judiciary and the dangers involved in serving as a judge in Peru. The Government was aware of the shortcomings of the judiciary and was attempting to tackle the problem. For the third year in succession, assistance was being provided by the United States Agency for International Development (USAID) and a sum of $3.4 million had been made available for a programme for the administration of justice, to help improve cooperation between prosecuting judges, increase access to legal services, establish legal aid offices and improve court information systems. Judges, prosecutors and police were being trained in investigatory procedures and a pilot human rights course for police was planned for the following year.

19. Ms. VARGAS (Peru), replying to questions concerning the independence of the judiciary, said that under the Constitution the National Council of the Magistracy was responsible for making proposals to the President for the appointment of judges, while the Supreme Court investigated the functioning of the judiciary and the national office for monitoring the judiciary was responsible for investigating judicial conduct. The composition of the National Council of the Magistracy, which included representatives of the Supreme Court, bar associations and university faculties, was a guarantee of its independence.

20. With regard to the rights of citizens in emergency zones, a legislative decree had been enacted to authorize prosecutors to visit police stations, military installations and other detention centres to monitor the situation of detainees and investigate alleged disappearances. The authorities would attempt to investigate all allegations concerning disappearances.

21. Mr. LAZARO (Peru), returning to the question of habeas corpus, said that the situation would be improved by a bill now before the Senate designed to overcome shortcomings in national legislation and ensure that the right of habeas corpus would be fully enjoyed.

22. Finally, he pointed out that the Council for Peace in Peru, established in 1991, would be submitting a national peace plan to the executive before the middle of April, which would include proposals to ensure the full observance of civil and political rights in Peru.

23. Mr. PRADO VALLEJO said that, in the armed struggle between insurgent terrorist groups and the Peruvian Government, many excesses had been committed on both sides. He wished to know whether the parties guilty of such excesses, especially agents of the State, had been found guilty and punished.

24. He wished to know what measures the Peruvian authorities had taken to overcome the problems referred to in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20). Perhaps Ms. Vargas could comment on Mr. Carlos Escobar Piñeda, a public prosecutor who had been

(Mr. Prado Vallejo)

relieved of his duties as a result of opposition in military circles. He had received so many threats after drawing attention to the excesses committed by the Peruvian army in the emergency zones that he had been forced to seek asylum in the United States. Prosecutors investigating human rights violations in the emergency zones continued to encounter obstruction on the part of the armed forces, and he wished to know what measures the Government was taking, or planned to take, to prevent such violations.

25. Mr. AGUILAR requested the Peruvian delegation to comment on the compatibility of the states of emergency with the provisions of the Covenant. Ms. Vargas had referred to four rights under the Covenant that had been suspended during states of emergency. However, she had said that, during states of siege, the Government of Peru stipulated only those rights that had not been suspended; that seemed to be incompatible with the Covenant.

26. He inquired whether a private citizen could institute proceedings in the appropriate court in order to have a law declared unconstitutional.

27. Mr. Lazaro had referred to the Government's efforts to strengthen the powers of the judiciary to combat drug trafficking. However, he had not referred to the difficulties the judiciary encountered in taking action against offences committed by the armed forces.

28. Mr. MAVROMMATIS said that, while the Committee had received many replies on factors and difficulties that Peru encountered in the implementation of the Covenant, the Peruvian delegation had not answered a number of general and specific questions. He suggested that the delegation should read the summary records of the meetings and submit written replies to the unanswered questions.

29. Ms. VARGAS (Peru) said that, on 3 September 1991, the Government had issued a decree that enabled prosecutors to enter police stations and detention centres in order to verify the status and ensure the safety of detainees or persons who had been reported missing. With respect to the question raised about Mr. Carlos Escobar Piñeda, the delegation would submit its answer in writing.

30. Mr. LAZARO (Peru) said that, according to the 1991 report of the Working Group on Enforced or Involuntary Disappearances, in 1990 there had been 231 cases of disappearances in Peru while, in 1991, that figure had fallen to 117. That difference reflected the Peruvian Government's efforts to promote compliance with the Covenant. Cases of alleged torture had fallen from 22 in 1990 to 7 in 1991. The number of cases in which the Government of Peru cooperated by providing one or more specific answers in cases of disappearances, had increased.

31. Ms. VARGAS (Peru) said that the constitutionality of a law could be challenged before the Court of Constitutional Guarantees by the President of the Republic, by 60 deputies or 20 senators or by a petition signed by 50,000 citizens whose signatures had been verified by the National Elections Tribunal.

32. Mr. LAZARO (Peru), replying to the comment made by Mr. Mavrommatis, said that the Peruvian delegation would read the summary records and provide written answers to those questions that had not been answered during the discussion.

Right to life, recognition as a person before the law, liberty and security of the person, prohibition of slavery and servitude, treatment of prisoners and other detainees (articles 6, 7, 8, 9, 10, 11 and 16 of the Covenant) (section II of the list of issues)

33. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Peru, namely: (a) measures taken to investigate cases of disappearances, extrajudicial executions or torture, and to prevent the recurrence of such acts; (b) rules and regulations governing the use of firearms by the police and security forces, and information on violations of those rules and regulations and on measures taken to prevent the recurrence of such violations; (c) current rate of infant mortality in Peru and the infant mortality rate among ethnic groups as compared with that of the general population; (d) concrete measures taken by the authorities to ensure the strict observance of article 7 of the Covenant, and information on whether or not confessions or testimony obtained under torture could be used in court proceedings; (e) clarification of the kinds of restriction on the liberty of the person provided for by law and for what purposes; (f) information on how quickly after arrest a person's family was informed; (g) information "on the policy of decriminalizing the inmates of prison institutions" as referred to in paragraph 48 (e) of the report; and (h) information on arrangements for the supervision of places of detention and on procedures for the submission and investigation of complaints.

34. Ms. VARGAS (Peru) said that disappearances, extrajudicial executions and torture or any other form of physical violence were offences, and those responsible were subject to the provisions of the Penal Code, the Code of Criminal Procedure and other enactments. In that regard, Legislative Decree No. 665 authorized representatives of the public prosecutor to enter police and military premises in order to ascertain the status and physical condition of detainees. The decree was designed to prevent disappearances. If any official or civil servant, mayor or administrator, fell victim to acts of terrorism or drug trafficking during their period of service, the members of the victim's family were entitled to benefits administered under the National Institute for Family Welfare.

35. Act 25054 contained provisions on the manufacture and sale of firearms and weapons used in war, and their possession and use by individuals. Ministerial Resolution No. 0179-90-IN/GE of 23 July 1989 established the requirements to be met by people who had a licence to possess firearms that

(Ms. Vargas, Peru)

were not military weapons. Decree-Law No. 19644 of 6 December 1972 provided that the personnel of police forces who used their weapons in accordance with regulations in the course of duty were exempt from penal, civil or administrative liability. Any violation of legislation on the possession and use of firearms was subject to the provisions of the Code of Military Justice and the Penal Code.

36. The Peruvian Government was aware of the need to give priority attention to the children of Peru, and it had prepared the Global Plan of Action for Children 1990-1995 in accordance with the provisions of the Convention on the Rights of the Child. Supreme Decree No. 012-91-JUS, had transferred the National Institute for Family Welfare from the judicial branch to the Presidency of the Council of Ministers in order to meet the needs of Peruvian children more quickly and effectively. With a view to assisting low-income families and, hence, children, the Government's budget included a section on support for grass-roots social organizations such as mothers' clubs (clubes de madres).

37. The infant mortality rate, originally as high as 60 per cent, had dropped substantially thanks to the $4 million provided by the United Nations Children's Fund (UNICEF) for programmes in the areas of infectious diseases and oral rehydration therapy.

38. According to article 2, paragraph 20 (j), of the Peruvian Constitution, statements obtained through the use of violence were not admissible, and whoever made use of violence in such cases was subject to criminal sanctions. Article 234 of the Constitution provided that no one could be subjected to torture or inhuman or degrading treatment and that anyone could petition a judge to order the immediate medical examination of a confined individual, if he believed that that person had been a victim of ill-treatment. In that regard, Law No. 23506 on habeas corpus and amparo contained provisions to ensure that ill-treatment was not used to extract confessions.

39. Article 231 of the Peruvian Constitution dealt with cases in which personal liberty was restricted. Under states of emergency, the constitutional guarantees relative to personal freedom and safety, the inviolability of the home, the freedom of assembly and movement mentioned in paragraphs 7, 9 and 10 and paragraph 20 (g) of article 2 of the Constitution, could be suspended.

40. In accordance with article 2, paragraph 20 (g), (h) and (i), no one could be arrested without written court order with a reason assigned by a judge or by the police authorities in a case of flagrante delicto. In such cases, the person in question was to be informed immediately and in writing of the reasons for his detention. Such person had the right to communicate with and be advised by an attorney of his choice from the time that he was charged or arrested by the authorities. No one could be held incommunicado except in a case indispensable for the investigation of a crime and such detention was

(Ms. Vargas, Peru)

subject to the conditions and time-limits prescribed by law. In all cases, the arrested individual must be placed, within 24 hours or the time necessary to travel the distance involved, at the disposal of the appropriate court.

41. With respect to the policy of rehabilitating prisoners, article 211, paragraph 12, of the Constitution stipulated that the President of the Republic had the power to execute and cause the execution of the sentences and decisions of the courts and tribunals. Through the National Prison Institute, the Ministry of Justice carried out the policy of decriminalizing inmates of prison institutions, which involved the granting of pardons to prisoners who through their behaviour had demonstrated that they were prepared to re-enter society.

42. Decree 665 authorized prosecutors to enter premises where individuals were being detained in order to ensure that their human rights were not being violated. If a detainee considered that his individual rights were being violated as a result of his arbitrary detention, he could invoke the remedies of habeas corpus and amparo.

43. Mr. HERNDL said that he was primarily concerned about the broad powers given to the military to combat terrorism. Under the state of emergency, the armed forces acted almost with impunity, applying the principle of collective responsibility and forcibly recruiting civilians for its tasks.

44. He inquired what measures had been taken - or could be taken - to prevent extrajudicial executions and disappearances. Moreover, the armed forces often resorted to torture in their military operations and during interrogations. While there had been a number of cases in which military personnel had been punished for excesses, all such cases had been tried and punished by military courts. He wished to know the nature of the convictions and whether any of the convicted persons had been pardoned.

45. In paragraphs 38 and 44 of the second periodic report, the Government indicated that the police in Peru were "trained to respect the Constitution and the national and international rules and regulations concerning the right to life" and that it was the Government's policy "to provide training in human rights for the police and the staff of prison institutions". Those two statements seemed somewhat exaggerated.

46. Paragraph 48 (d) stated that a person who had been arrested must be brought before the competent court within 24 hours, or as soon as distance permitted. He inquired whether that rule was applied in all operations conducted to combat terrorism and insurgency in the country.

47. The statement, in paragraph 52 of the report, that the Peruvian Penal Code was "fully in line with the international covenants regarding respect for the right of citizens who had been deprived of their freedom" was very general. He had studied the initial report of Peru and had found no reference

(Mr. Herndl)

to the segregation of detainees from convicted prisoners, and he inquired whether Peruvian law provided for the separation of those two categories of prisoners. The initial report of Peru indicated that young offenders between the ages of 18 and 21 were separated from other convicts. He wondered whether that was also the case for offenders under 18 years of age.

48. Mr. WENNERGREN requested clarification regarding the rights of the unborn child under Peruvian law. Specifically, he wished to know whether abortion was prohibited and, if so, how many illegal abortions took place each year, whether a woman having an abortion would be prosecuted, and if any exceptions were made. For example, there had been reports of many rapes, committed both by insurgents and by members of Government forces, and he wondered if the victims would be entitled to an abortion.

49. The exemption from criminal responsibility for abuse of power and unnecessary use of violence for a person acting under orders found in article 20 of the Penal Code gave him some concern. Similar provisions in the laws of other States parties had been found to be in violation of the Covenant. An individual who violated the law should be punished even if obeying orders. He wondered how that exemption was applied, and in how many instances.

50. A presidential decree of 1990 had restricted challenges to acts performed in an official capacity, and he would like to know more about its impact. Article 210 of the Constitution stated that the President could be charged for certain acts of treason only, but was otherwise immune to prosecution. He would welcome further explanation of that provision.

51. He wondered whether the assertions in paragraph 38 of the report were too categorical. Due to the difficult circumstances faced by Peru, some violations were unavoidable. The police might be trained to respect the Constitution and rules and regulations concerning the right to life, dignity and physical integrity for all persons in detention or under investigation, but he wondered if that training extended to the army also.

52. Miss CHANET said that the delegation of Peru had given statistics on the number of reported disappearances and had indicated that progress had been made in that area. She found it difficult to see how 114 disappearances could be considered progress, since even one would represent a serious human rights violation. It seemed too early for optimism.

53. Democracy did not consist simply in a system of elections and a constitution. True democracy would not exist until the rule of law prevailed, and could not include a military or paramilitary force superior to the Government.

(Miss Chanet)

54. It appeared that the exemption from responsibility accorded to officials when acting under orders would guarantee immunity to some members of the police and armed forces. She wondered if any action ordered, whether a massacre, torture or an extrajudicial execution would be fully exonerated. Clarification was needed regarding the government circular stating that all terrorists were to be executed in the zones under military control. More information on forced conscription into the militia would also be welcome. With respect to article 9 of the Covenant, she would like to know if the time within which a person arrested must be brought before the competent court was limited or unlimited, since the wording "as soon as distance permits" used in paragraph 48 (d) of the report seemed open-ended.

55. Mr. FODOR said that, with regard to Covenant article 10 on the treatment of prisoners, he would welcome information on prison conditions, including sanitary conditions, health care and nutrition of detainees. He wondered how widespread the reported instances of harsh treatment were, and whether there were any statistics on the numbers of complaints made by prisoners about their treatment.

56. Mr. SADI said that it was encouraging that the delegation had admitted that some excesses had occurred and had explained that it was the policy to investigate them. However, the low proportion of successful investigations suggested that no serious effort was being made in that area. He wondered if the leadership had spoken out publicly against the abuse of power. He would welcome more information on government policy and its expression at the highest levels. As long as excesses were allowed to continue, they would provide ammunition to the opposition and to terrorist groups. The Government must take a more definite stand on excesses. If it did not, there would be doubts whether the political will existed to fight them.

57. Mr. AGUILAR said that as the right to life was the most essential right embodied in the Covenant, more ample information should have been provided on that subject. He shared the concerns expressed by other members about the functioning of the legal system. The constitutional provisions were very modern, even exemplary, but the difficulty lay in their implementation or lack thereof. The new Penal Code in particular did not seem to be applied to the armed forces and the police.

58. According to reports and - commendably - by the Government's own admission, execution, torture and unlawful detention were commonplace in the zones under military control. Death squads were also operating in such areas, where normally nothing escaped the notice of the military. He would like to know what had been done to investigate and prevent such cases.

59. More information was needed on the sweeping immunities that had been enjoyed by individuals tried by military courts. Many acts which constituted violations of articles 6, 7 and 9 of the Covenant were not regarded as criminal under the Code of Criminal Justice. He wondered if there were any plans to remove such offences from the jurisdiction of military tribunals.

(Mr. Aguilar)

60. The existence of civilian defence patrols raised many questions. There was an apparent pattern of abuse, since members were provided with weapons but no training, especially not about the rights of citizens. Individuals were often forced to join or suffer reprisals, even death.

61. It would be useful to have more details about lawful detention, since there were apparent discrepancies between the law and practice, particularly in the military control zones. For instance, over 5,000 disappearances had been reported in the decade ending in 1990, while the circumstances of only about 1,000 had been clarified. The fact that such disappearances had occurred confirmed that the legal requirements relating to detention were being violated. The suspension of the rights to personal freedom guaranteed under article 9 should also be clarified.

62. Investigations by public prosecutors had often been impeded and the investigators themselves had received threats. He wondered what guarantees and protection were afforded prosecutors to enable them to perform their functions. The concept of collective responsibility constituted a possible gross violation of article 14, and he wished to learn more about the decree permitting elimination of subversives.

The meeting rose at 1.05 p.m.